

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'  
MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL**

Lead Plaintiffs Todd Cox and Mary Dinzik (“Plaintiffs”) respectfully submit this Memorandum of Law in Support of their Motion to For Leave to File Documents Under Seal, filed pursuant Section 6 of the Electronic Case Filing Rules & Instructions for the Southern District of New York (April 1, 2020 Edition). Plaintiffs seek an Order permitting them to file the following documents under seal: (1) Plaintiffs’ Memorandum In Support of Plaintiffs’ Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel (the “Brief”); and (2) the Loss Causation and Damages Report of Steven Feinstein, Ph.D., CPA, attached as Exhibit A to the Declaration of Kim E. Miller in Support of Plaintiffs Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel (the “Feinstein Report”).

The Feinstein Report contains references to documents (also cited in Plaintiffs’ Brief) designated “Confidential” by Defendants pursuant to the June 18, 2018 Confidentiality Agreement and Stipulated Protective Order (the “Protective Order”). *See* Dkt. No. 134. As Judge Woods recently explained, the federal courts are “not a Star Chamber,” and there is a long-established “general presumption in favor of access to judicial documents.” *Delta Airlines, Inc. v. Bombardier, Inc.*, No. 20-CV-3025-GHW, 2020 U.S. Dist. LEXIS 90800, at \*2, \*11 (S.D.N.Y. May 22, 2020). Accordingly, on June 3, 2020, Plaintiffs asked if Defendants would consent to Plaintiffs filing the Feinstein Report publicly without redaction. Defendants responded on June 4, 2020, that they needed more time to review the Feinstein Report, which was served on May 29, 2020, and needed to confer with their client on the West Coast, but explained that if Plaintiffs wished to file promptly, it would have to be under seal. In an attempt to avoid needless motion practice, Plaintiffs waited four more days for Defendants’ position on this simple issue,

but Defendants did not respond. To prevent further delay, Plaintiffs have elected to move forward in filing their motion for class certification.

As a result, in order to comply with ¶ 22 of the Protective Order, Plaintiffs must file the instant Motion and supportive Memorandum, even though Plaintiffs have no interest in maintaining confidentiality of any part of the Feinstein Report or Memorandum. Moreover, Plaintiffs do not believe that any of the thirteen documents referenced in the Feinstein Report (two of which are also referenced in the brief) should continue to receive confidential treatment at this juncture, nor do they believe that Defendants can meet their “heavy burden” to demonstrate that confidential treatment is warranted. *See KDH Consulting Group LLC v. Iterative Capital Management L.P., et al.*, 20-CV-3274, at 1 (S.D.N.Y. Apr. 27, 2020) (McMahon, C.J.) (“The right of public access to court documents is one of constitutional dimension. Therefore a party seeking to file documents under seal has a heavy burden to demonstrate that there is some reason why the public should not have full access to all publicly-filed documents.”). These documents are all stale (more than five years old), do not involve trade secrets or competitive information, and BlackBerry is no longer even in the mobile handset business, which is the primary focus of this litigation.

DATED: June 8, 2020

Respectfully submitted,

**KAHN SWICK & FOTI, LLC**

/s/ Kim E. Miller

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**CERTIFICATE OF SERVICE**

On June 8, 2020, the foregoing document was filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Kim E. Miller  
Kim E. Miller